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FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON

11 C.F.R. § 109.21

**Legend**

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

Complainant alleges that Katie McGinty for Senate and Roberta Golden in her official capacity as treasurer ("McGinty Committee"), received excessive and prohibited in-kind contributions as a result of coordinated expenditures made by several outside groups. Complainant further alleges that public comments in an article in POLITICO made by Ed Rendell, the McGinty Committee's Chair, prove that these expenditures were coordinated. Several of the named groups, including EMILY's List and Ranny Cooper in her official capacity as treasurer ("EMILY's List"), League of Conservation Voters, Inc. ("LCV"), League of Conservation Voters Action Fund and Patrick Collins in his official capacity as treasurer ("LCV Action Fund"), and League of Conservation Voters Victory Fund and Patrick Collins in his official capacity as treasurer ("LCV Victory Fund") (collectively "LCV Respondents") assert that they made no expenditures in support of McGinty's campaign. One group, Women Vote! and Denise Feriozzi in her official capacity as treasurer ("Women Vote!"), acknowledges making expenditures, but denies that they were coordinated.

As set forth below, we recommend that the Commission find no reason to believe that the McGinty Committee or Ed Rendell received excessive or prohibited in-kind contributions, in violation of 52 U.S.C. §§ 30116(f) or 30118. We further recommend that the Commission find no reason to believe that EMILY's List, the LCV Respondents, and Women Vote! made excessive or prohibited in-kind contributions, in violation of 52 U.S.C. §§ 30116(a)(2)(A) or 30118.

1    **II.    FACTUAL AND LEGAL ANALYSIS**

2            **A.    Background**

3            Katie McGinty is the 2016 Democratic candidate for U.S. Senate in Pennsylvania. Katie  
4            McGinty for Senate is McGinty's authorized committee, and Roberta Golden is the committee's  
5            treasurer. Former Pennsylvania Governor Ed Rendell is Chair of the McGinty Committee.

6            EMILY's List is a federally registered, multicandidate political committee that makes  
7            direct contributions to, and solicits contributions on behalf of candidates it supports. Women  
8            Vote! is a federally registered independent-expenditure-only committee that engages in various  
9            forms of general public communication, and is affiliated with EMILY's List.

10           LCV is a non-profit organization, which is registered with the Commission as a qualified,  
11           non-party political committee. LCV Action Fund is a federally registered political action  
12           committee and LCV Victory Fund is a federally registered independent-expenditure-only  
13           committee. Patrick Collins is the treasurer of both LCV Action Fund and LCV Victory Fund.

14           On March 10, 2016, POLITICO reported,

15           Former Gov. Ed Rendell, McGinty's campaign chairman, told Campaign Pro that  
16           EMILY's List will spend far more than \$1 million on the race. Rendell, who has  
17           said McGinty and outside groups need to spend at least \$3.5 million combined in  
18           the primary, said he believed EMILY's List would spend at least \$2 million on  
19           television, with some of the cash coming from the League of Conservation  
20           Voters. Both groups have endorsed McGinty, and Rendell said EMILY's List  
21           would be placed in charge of the pro-McGinty independent expenditure  
22           operation.<sup>1</sup>

<sup>1</sup> Compl. at 1. See <http://www.politico.com/tipsheets/morning-score/2016/03/boehner-invisible-as-candidates-scrap-to-replace-him-in-ohio-clinton-sanders-debate-in-miami-outside-money-pours-into-pennsylvania-senate-213144#ixzz4HR8YM0YT>.

1 Based solely on these purported statements, the Complaint alleges that Rendell possessed non-  
2 public information regarding the spending plans of these outside groups and asserts that the  
3 McGinty Committee must have coordinated with them on those plans.<sup>2</sup>

4 EMILY's List and the LCV Respondents deny that they made any expenditures in  
5 support of McGinty.<sup>3</sup> Although Women Vote! acknowledges making \$1,750,447 in independent  
6 expenditures, it denies the coordination allegations.<sup>4</sup> Women Vote! argues that it had already  
7 publicly discussed its plans to make independent expenditures in support of McGinty's  
8 campaign, and it attached a March 9, 2016, press release and other documents stating its  
9 commitment to support McGinty.<sup>5</sup> Additionally, Women Vote! asserts that it maintains a  
10 firewall policy that bars all employees and consultants who work on its independent expenditure  
11 program from having any material contact with any of the federal candidates, committees, or  
12 their agents that Women Vote! supports.<sup>6</sup>

13 The McGinty Committee and Rendell deny any coordination.<sup>7</sup> Both assert that the  
14 statements attributed to Rendell in the POLITICO article were based on publicly available

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<sup>2</sup> Compl. at 4-5.

<sup>3</sup> EMILY's List/Women Vote! Resp. at 4-6; LCV Resp. at 1-2.

<sup>4</sup> EMILY's List/Women Vote! Resp. at 4-6.

<sup>5</sup> *Id.* at 4. See "Women Vote! Launches \$1 Million Program in Pennsylvania," (Mar. 9, 2016), <http://emilyslist.org/news/entry/women-vote-launches-1-million-program-in-pennsylvania>; J. Mathis, *EMILY's List Vows \$1M to Back McGinty*, PHILADELPHIA, Mar. 10, 2016; EMILY's List/Women Vote! Resp., Exh. B, Women Vote! Memorandum, "Winning with Katie McGinty," January 14, 2016; EMILY's List/Women Vote! Resp., Exh. C, Women Vote! Memorandum, "Taking Back the Senate with Katie McGinty," March 2016.

<sup>6</sup> *Id.* Women Vote! provides a copy of its firewall policy with its response, and asserts that the policy was distributed to all relevant employees, consultants, and clients. *Id.* at 4-5, Exh. A. The policy prohibits all employees who work on the Women Vote! independent expenditure program from having any material contact with any federal candidate, agents, or campaign that is supported by Women Vote! *Id.* at 5, Exh. A. The policy also restricts independent expenditure program employees' interaction with any EMILY's List staff or consultants who work with federal candidates and political party committees on Women Vote! coordinated programs. *Id.*

<sup>7</sup> McGinty Committee Resp. at 3-5 and Rendell Resp. at 2.

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1 information, and did not contain the kind of information that could only have been obtained  
2 through direct, private communications with the committees named in the article.<sup>8</sup> The McGinty  
3 Committee also asserts that it did not request, suggest, or otherwise assent to any of the  
4 communications sponsored by Women Vote!.<sup>9</sup>

5 **B. Analysis**

6 The Act provides that no multicandidate committee may make contributions to any  
7 candidate or her authorized committee with respect to any election for Federal office, which  
8 aggregate to exceed \$5,000.<sup>10</sup> Expenditures made by any person "in cooperation, consultation,  
9 or concert with, or at the request or suggestion of" a candidate or her authorized committee or  
10 agent qualify as a contribution to the candidate and must be reported as expenditures made by the  
11 candidate's authorized committee.<sup>11</sup> Consequently, a communication that is coordinated with a  
12 candidate or her authorized committee is considered an in-kind contribution and is subject to the  
13 limits, prohibitions, and reporting requirements of the Act.<sup>12</sup> The Act prohibits corporations  
14 from making, and candidates or their committees from knowingly accepting, contributions in  
15 connection with any election to political office.<sup>13</sup>

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<sup>8</sup> *Id.*; *id.* Rendell admits in the Response that he knows EMILY's List's President, Stephanie Schriock, but states that he believes that she has no role in its independent expenditure program, and claims that he has never had material contact with the individuals involved in the EMILY's List or Women Vote! independent expenditure programs. Rendell Resp. at 1-2. He further asserts that he has separately assisted both EMILY's List and the McGinty Committee with their respective fundraising efforts, but at no time has he learned of private strategies or planning from either entity, nor has he communicated private information to either committee. *Id.* at 2.

<sup>9</sup> McGinty Committee Resp. at 5.

<sup>10</sup> 52 U.S.C. § 30116(a)(2)(A).

<sup>11</sup> 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20(a).

<sup>12</sup> 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

<sup>13</sup> 52 U.S.C. §§ 30118(a).

1 A communication is coordinated with a candidate, her authorized committee, or agent of  
2 either, if it meets a three-prong test set forth in the Commission's regulations: (1) it is paid for,  
3 in whole or in part, by a person other than the candidate or authorized committee; (2) it satisfies  
4 one of five content standards in 11 C.F.R. § 109.21(c); and (3) it satisfies one of six conduct  
5 standards in 11 C.F.R. § 109.21(d).<sup>14</sup> All three prongs must be satisfied for a communication to  
6 be considered coordinated.<sup>15</sup>

7 **1. Payment Prong**

8 Disclosure reports filed with the Commission support the assertions that EMILY's List  
9 and the LCV Respondents made no independent expenditures or electioneering communications  
10 during McGinty's primary election, and there is no other available information that EMILY's  
11 List or the LCV Respondents made such expenditures. Thus, the payment prong is not satisfied  
12 as to these committees. Women Vote! satisfies the payment prong because it admits it spent  
13 \$1,750,447 for communications that expressly advocated for McGinty's election.<sup>16</sup>

14 **2. Content Prong**

15 The content prong is satisfied if the communication in question meets at least one of the  
16 content standards.<sup>17</sup> Publicly available information indicates that Women Vote! paid for  
17 independent expenditures and electioneering communications that aired within 120 days of the

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<sup>14</sup> 11 C.F.R. § 109.21(a).

<sup>15</sup> *Id.* See also Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003).

<sup>16</sup> EMILY's List/Women Vote! Resp. at 3.

<sup>17</sup> The content standards include: (1) a communication that is an electioneering communications under 11 C.F.R. § 100.29(a); (2) a public communication that disseminates, distributes, or republishes campaign materials; (3) a public communication containing express advocacy; or (4) a public communication that, in relevant part, refers to a clearly identified federal candidate, is publicly distributed or disseminated 120 days or fewer before a primary or general election, and is directed to voters in the jurisdiction of the clearly identified candidate. 11 C.F.R. § 109.21(c).

1 Pennsylvania Democratic primary election held on April 26, 2016.<sup>18</sup> And, as mentioned above,  
2 Women Vote! reported making \$1,750,447 in independent expenditures in support of McGinty.

3 **3. Conduct Prong**

4 The Commission's regulations set forth six types of conduct between the payor and the  
5 candidate's committee, whether or not there is formal agreement or collaboration, which can  
6 satisfy the conduct prong.<sup>19</sup> Such conduct includes: (1) a request or suggestion; (2) material  
7 involvement; (3) substantial discussion; (4) common vendor; (5) former employee or  
8 independent contractor; and (6) dissemination, distribution, or republication of campaign  
9 material.<sup>20</sup>

10 The coordination regulations contain a safe harbor for political committees that make  
11 independent expenditures if those committees establish and implement a firewall that meets  
12 certain requirements.<sup>21</sup> The firewall must prohibit the flow of information between the  
13 employees or persons providing the services for the person paying for the communication and  
14 those employees or consultants currently or previously providing services to the affected  
15 candidate or his committee.<sup>22</sup> The firewall must be described in a written policy that is  
16 distributed to all relevant employees, consultants, and clients affected by the policy.<sup>23</sup> For

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<sup>18</sup> See <http://www.emilyslist.org/news/entry/women-vote-launches-ad-educating-pennsylvania-voters-on-sestaks-record> (Apr. 11, 2016). The Women Vote! "Get" commercial supporting McGinty started airing April 4, 2016. See <https://www.youtube.com/watch?v=EJljh70rkQA>. The Women Vote! "Spin" commercial supporting McGinty started airing April 11, 2016. See <https://www.youtube.com/watch?v=AHqUXfPPUls&feature=youtu.be>.

<sup>19</sup> 11 C.F.R. § 109.21(d).

<sup>20</sup> *Id.*

<sup>21</sup> 11 C.F.R. § 109.21(h).

<sup>22</sup> *Id.*; see also MUR 5506 (Castor) First General Counsel's Report at 7-8 (Aug. 9, 2005).

<sup>23</sup> *Id.*

1 committees with a firewall, the safe harbor is applicable in all circumstances unless specific  
2 information demonstrating coordination is present.<sup>24</sup>

3 The Complaint does not allege specific acts that indicate that the conduct prong of the  
4 coordination test was satisfied through direct contacts between Women Vote! and the McGinty  
5 Committee. Instead, the Complaint suggests that Rendell's statements show that he had access  
6 to private information about the Respondents' plans to make independent expenditures, which he  
7 could only have gained through coordination with those committees.<sup>25</sup> In their Responses, the  
8 McGinty Committee, Rendell, and Women Vote! all deny engaging in actions that would meet  
9 the conduct standards for coordination.<sup>26</sup> Moreover, Women Vote! contends that it maintains a  
10 firewall to prevent communications between federal candidates and the team responsible for  
11 making independent expenditures.<sup>27</sup>

12 The available information does not support a reasonable inference that Women Vote! met  
13 any of the conduct standards for coordination.<sup>28</sup> Women Vote! issued public statements  
14 indicating its intent to make independent expenditures to support McGinty before Rendell made  
15 the statement cited in the POLITICO article. Further, Rendell's statements could reasonably be  
16 interpreted as his opinion of what might happen as the election unfolded, not a direct request;

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<sup>24</sup> Explanation and Justification, Coordinated Communications, 71 Fed. Reg. 33,190, 33,206-07 (2006).

<sup>25</sup> Compl. at 4-5.

<sup>26</sup> McGinty Committee Resp. at 5; Rendell Resp. at 1-2; Emily's List/Women Vote! Resp. at 4-5.

<sup>27</sup> Emily's List/Women Vote! Resp. at 4.

<sup>28</sup> In order to meet the "request or suggestion" conduct standard, the benefiting candidate or committee must make a direct request to a specific individual, group or audience and not simply to the public generally. *See* MUR 6411 (Pelosi) First General's Counsel Report at 12-13 (May 16, 2011); MUR 6821 (Shaheen) First General's Counsel Report at 8 (Jan. 21, 2015); *see also* E&J, 68 Fed. Reg. at 432.



1 thus, it does not qualify as a "request or suggestion" that Women Vote! make certain  
2 independent expenditures, as required by the conduct prong of the coordination test.<sup>29</sup>

3 Additionally, Women Vote!'s firewall appears to meet the requirements of the safe  
4 harbor, and there is no publicly available information, including that cited in the Complaint, to  
5 suggest that Women Vote! did not follow its firewall policy. Therefore, Women Vote!'s  
6 payment for and production of independent expenditures supporting McGinty's candidacy does  
7 not satisfy the conduct prong of the coordination test.

8 Because there is no basis to conclude that any of the Respondents made or received  
9 excessive or prohibited in-kind contributions as a result of coordinated expenditures, we  
10 recommend that the Commission find no reason to believe that Katie McGinty for Senate and  
11 Roberta Golden in her official capacity as treasurer, Ed Rendell, EMILY's List and Ranny  
12 Cooper in her official capacity as treasurer, Women Vote! and Denise Feriozzi in her official  
13 capacity as treasurer, League of Conservation Voters, Inc., League of Conservation Voters  
14 Action Fund and Patrick Collins in his official capacity as treasurer, and League of Conservation  
15 Voters Victory Fund and Patrick Collins in his official capacity as treasurer, violated 52 U.S.C.  
16 §§ 30116(a)(2)(A), (f) or 30118.

17 **III. RECOMMENDATIONS**

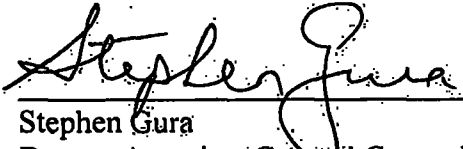
18 (1) Find no reason to believe Katie McGinty for Senate and Roberta Golden in her  
19 official capacity as treasurer, or Ed Rendell violated 52 U.S.C. §§ 30116(f) or  
20 30118 by accepting excessive or prohibited in-kind contributions;


21  
22 (2) Find no reason to believe EMILY's List and Ranny Cooper in her official  
23 capacity as treasurer, violated 52 U.S.C. §§ 30116(a)(2)(A) or 30118 by making  
24 excessive or prohibited in-kind contributions;

- 1 (3) Find no reason to believe Women Vote! and Denise Feriozzi in her official  
2 capacity as treasurer, violated 52 U.S.C. §§ 30116(a)(2)(A) or 30118 by making  
3 excessive or prohibited in-kind contributions;  
4  
5 (4) Find no reason to believe League of Conservation Voters, Inc.; League of  
6 Conservation Voters Action Fund and Patrick Collins in his official capacity as  
7 treasurer, and League of Conservation Voters Victory Fund and Patrick Collins in  
8 his official capacity as treasurer, violated 52 U.S.C. §§ 30116(a)(2)(A) or 30118  
9 by making excessive or prohibited in-kind contributions;  
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11 (5) Approve the attached Factual and Legal Analysis;  
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13 (6) Approve the appropriate letters; and  
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15 (7) Close the file.  
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Lisa Stevenson  
Acting General Counsel

10.3.16  
Date

BY:   
Stephen Gura  
Deputy Associate General Counsel  
For Enforcement

  
Mark Shonkwiler  
Assistant General Counsel

  
Camilla Jackson Jones  
Attorney *me*

Attachment:  
Factual and Legal Analysis